

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COLE GUSTIN, by and through CARMEN
 GUSTIN, Guardian Ad Litem,

Plaintiff,

vs.

PLANO MOLDING COMPANY, et al.,

Defendants.

Case No. 2:14-cv-00700-RCJ-CWH

ORDER

Presently before the Court is Defendant Dorskocil Manufacturing Company's Motion to Set Reasonable Fees for the Deposition of James Loong, Ph.D. (ECF No. 134), filed on January 29, 2016. The motion is unopposed. (Notice of Non-Resp. (ECF No. 138).)

The issue on this motion is Dr. James Loong's fees for taking his deposition. Dr. Loong is Plaintiff's neuropsychological expert. (Mot. to Set Fees, Ex. A.) Dr. Loong initially provided to Defendant Dorskocil a retainer agreement stating that he charged a rate of \$800.00 per hour for evaluation and recommendation and \$1,000.00 per hour for depositions. (*Id.* at Ex. B.) The agreement states that Dr. Loong requires pre-payment of fees. (*Id.*) Dr. Loong subsequently provided to Defendant Dorskocil an updated agreement with an increased deposition fee of \$1,500.00 per hour as well as an invoice for all seven hours of his deposition time, totaling \$10,500.00. (*Id.* at Exs. D, E.) Dr. Loong charged Plaintiff \$800.00 per hour for work on Plaintiff's case. (*Id.* at Ex. F.)

Defendant Dorskocil now requests that the Court limit Dr. Loong's hourly fee, arguing that it is unreasonable for Dr. Loong to charge Defendant Dorskocil \$700.00 per hour more than what he charged Plaintiff. Defendant Dorskocil requests that Dr. Loong's hourly fee be set at \$500, which is the rate of Defendant Dorskocil's neuropsychological expert, Lewis Etkoff, Ph.D. (*Id.* at Ex. G.) Alternatively, Defendant Dorskocil requests that Dr. Loong's hourly fee be set at \$800.00, which is

1 his normal hourly rate. As evidence of the prevailing rates for neuropsychological experts,
2 Defendant Daskocil provides the fee schedule of neuropsychologist Ari Kalechstein, who charges
3 \$650.00 per hour for depositions. (*Id.* at Ex. H.) Defendant Daskocil also requests that it not be
4 required to execute a contract or agreement with Dr. Loong regarding the deposition.

5 Under Federal Rule of Civil Procedure 26(b)(4)(E)(I), the party seeking discovery must pay
6 an expert “a reasonable fee” for time spent in a deposition. In determining what constitutes a
7 reasonable fee, courts consider factors such as “(1) the witness’s area of expertise, (2) the education
8 and training that is required to provide the expert insight that is sought, (3) the prevailing rates for
9 other comparably respected available experts, (4) the nature, quality and complexity of the discovery
10 responses provided, (5) the cost of living in the particular geographic area, (6) the fee being charged
11 by the expert to the party who retained him, (7) fees traditionally charged by the expert on related
12 matters, and (8) any other factor likely to be of assistance to the court in balancing the interests
13 implicated by Rule 26.” *Axelsson v. Hartford Ins. Co. of the Midwest*, No. 2:11-cv-1827-RCJ-GWF,
14 2013 WL 1261757, at *2 (D. Nev. Mar. 26, 2013).

15 Here, Defendant Daskocil does not provide argument or evidence on any of these factors
16 except the prevailing rates and the fee being charged by the expert to the party who retained him.
17 Regardless, given that the other experts’ rates are well below \$1,500.00 per hour for depositions and
18 that Dr. Loong charged Plaintiff \$800.00 for the work performed in this case, the Court finds that the
19 hourly rate of \$800.00 for Dr. Loong’s deposition is reasonable. The Court therefore will grant
20 Defendant Daskocil’s motion to the extent that it requests that Dr. Loong’s deposition fee be set at
21 \$800.00 per hour.

22 The Court further orders Defendant Daskocil to pay Dr. Loong \$1,600.00 in advance of his
23 scheduled deposition. The \$1,600.00 covers the first two hours of Dr. Loong’s deposition. If the
24 deposition exceeds two hours, then Defendant Daskocil must pay Dr. Loong for the additional time
25 based on an hourly rate of \$800.00, in half-hour increments, i.e., if the deposition goes an additional
26 half hour, Defendant Daskocil must pay an additional \$400.00. Dr. Loong must make himself
27 available for up to four hours of deposition time. Defendant Daskocil must promptly pay any
28 additional compensation for the deposition to Dr. Loong. Finally, neither Defendant Daskocil nor its

1 attorney are required to execute a contract with Dr. Loong regarding his deposition; rather, the
2 Federal Rules of Civil Procedure and this Court's orders govern the conditions under which the
3 deposition is taken.

4 IT IS SO ORDERED.

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6 DATED: March 9, 2016

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9 C.W. Hoffman, Jr.
United States Magistrate Judge